

Electronic Devices Policy

As a preliminary matter, the subcommittee recognizes the inherent authority of a judge presiding over a proceeding to control activities in his or her courtroom, including the use of electronic devices capable of wireless communications.

While keeping this principle in mind, the subcommittee does not endorse any policy that broadly restricts possession and use of electronic devices within a courthouse. Given the expanding wireless communications infrastructure and the extent to which the public now depends on this technology, the subcommittee does not believe a broad ban is desirable and may not be feasible.

The subcommittee recognizes there are legitimate concerns about the potential for misuse of this technology, including by persons summoned for juror service. To address these concerns, the subcommittee believes each district court should develop its own policy on use of electronic devices, and disseminate the policy widely to the bar, public and media. To assist the district courts in developing a policy, the subcommittee offers the following principles/practices for consideration.

General considerations:

1. Anyone should be allowed to bring a cell phone, a Blackberry or other personal digital assistant (PDA), a laptop computer or similar functioning device into the courthouse.
2. Except for courtrooms, persons may use such devices in public areas of the courthouse to make telephone calls or to transmit and receive data communications. For reasons of privacy, safety, and security, use of these devices to take photographs or for audio or video recording or transmission should be prohibited in the courthouse (exceptions for court staff, authorized vendors or for educational or ceremonial events).
3. In courtrooms, persons may use such devices to take notes and to transmit and receive data communications. Persons may not use these devices for telephone calls, photographs or audio or video recording or transmission. The judge may prohibit or further restrict use of such devices if they interfere with the administration of justice, the security of the proceeding or the integrity of the process.

The subcommittee makes no recommendations associated with allowing designated news media to use cameras in the courtroom. The Judicial Council of the Ninth Circuit recently addressed this issue by way of a Ninth Circuit Judicial Conference resolution, which was forwarded to the JCUS Committee on Court Administration and Case Management.

4. It should be anticipated that reporters, bloggers and other observers seated in the courtroom may use these devices to prepare and post online news accounts and commentary during the proceedings. Judges should instruct counsel to instruct witnesses who have been excluded or subject to exclusion agreements not to receive or view accounts of other witnesses' testimony prior to giving their testimony.
5. Every effort should be made to inform the public about where and how electronic devices may be used in the courthouse. Notices should be posted in the courthouse and on the court's web site.

For jurors:

Considering the difficulty the judiciary has in finding jurors, courts should not make the prospect of jury service even less attractive and more cumbersome by prohibiting use of wireless communications devices. The subcommittee suggests the following:

1. Persons summoned for jury service should be allowed to bring a cell phone, a Blackberry or other personal digital assistant (PDA), a laptop computer or similar functioning device into the jury assembly area, and to use these devices in the same manner as allowed in other public areas of the courthouse.
2. During voir dire, trial, and deliberations, a juror may use an electronic device only in accordance with the instructions delivered by the judge at the commencement of jury selection.
3. Judges should clearly admonish jurors not to use these devices to read news accounts of the trial, conduct research related to the case, ask legal questions of anyone, discuss the case with anyone, or express their views online via blogs, Twitter accounts, instant messaging systems, text messaging or other means. The admonition should include an explanation of why these

prohibitions are necessary, and should be delivered in addition to and not as a substitute for the Model Jury Instructions, 9th Cir. Crim. Jury Instr. 1.9 (2003) and 9th Cir. Civ. Jury Instr. 1.12 (2007).

4. Courts should be aware that jurors may desire to take notes on electronic devices. The subcommittee does not believe this will be feasible in most courthouses without upgraded infrastructure, additional staff support and technological safeguards for the electronic data. Until then, courts should not be obligated to provide jurors with anything more than the means to take notes in writing. Meanwhile, courts should monitor the development of methods by which jurors can utilize electronic devices for taking notes.
5. Courts should be cognizant of Ninth Circuit Model Jury Instruction 2.14 Evidence in Electronic Format, which calls for courts to provide a computer and associated equipment in the jury deliberation room for viewing of electronic exhibits. Courts also should consider permitting deliberating jurors to have electronic access to the final jury instructions in addition to providing each juror with a printed copy of the final instructions.

As to other use of electronic devices during the course of deliberations -- i.e., while the jurors are discussing among themselves what the verdict should be -- there is an additional concern that courts should take into account. Ongoing jury deliberations must remain not only confidential and private, but devoid of potentially chilling features. For a juror to take notes on an electronic device about what other jurors are saying would create such a risk of intimidation, and if the juror were allowed to remove his electronically-recorded notes from the jury room, it might also enhance the risk that the jury's deliberations would be widely disclosed at the end of the case.

Accordingly, at the very least courts should take appropriate steps to assure that if such electronic note-taking is not prohibited altogether, then whatever has been placed on an electronic device during the course of deliberations may not be removed from the jury room at any time and will be destroyed at the conclusion of the jurors' service (as the subcommittee understands is the current practice as to handwritten notes).

6. Every effort should be made to instruct properly and inform citizens summoned for jury duty, through summons, questionnaires or the court's website, as to where and how wireless communications devices may be used in the courthouse. This would include information on use in the jury

assembly room, while on trial breaks or lunch hours, and before and/or during deliberations.